Reprinted
February 20, 2009

SENATE BILL No. 301

DIGEST OF SB 301 (Updated February 19, 2009 5:22 pm - DI 104)

Citations Affected: IC 12-15; IC 30-4.

Synopsis: Medicaid transfer of assets and trusts. Specifies that beginning October 1, 2009, the office of Medicaid policy and planning (office), in determining eligibility, may not consider a total of $1,200 per year in contributions by an individual to a family member or nonprofit organization as an improper transfer and may disregard certain contributions. States that the office may not apply certain penalties to noninstitutionalized individuals for the disposal of assets. Specifies that rules adopted by the office of the secretary concerning transfer of assets may not: (1) apply to a transfer of property that occurred before the effective date of the rule; and (2) require an individual to return all assets in order to reduce a penalty period for the transfer of assets. Specifies that, beginning October 1, 2009, a trustee of certain trusts may not distribute trust property except for state and federal taxes to any person entitled to a payment from the trust until the office has been fully reimbursed for rendered assistance.

Effective: July 1, 2009.

Miller, Mishler, Sipes

January 7, 2009, read first time and referred to Committee on Health and Provider Services.
February 12, 2009, amended, reported favorably — Do Pass.
February 19, 2009, read second time, amended, ordered engrossed.

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First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

C o p y

SENATE BILL No. 301

A BILL FOR AN ACT to amend the Indiana Code concerning Medicaid.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 12-15-2-23 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 23. (a) This section is effective beginning October 1, 2009.**

(b) Except as provided in subsection (c), when the office conducts a look back (as described in 42 U.S.C. 1396p(c)) to determine, for purposes of eligibility, whether an individual improperly transferred assets, the office shall not consider in total one thousand two hundred dollars ($1,200) per year of contributions made by the individual to a:

(1) family member; or

(2) nonprofit organization;

as an improper transfer.

(c) The office may disregard a contribution by an individual if the individual can demonstrate that the transfer follows a pattern that existed for at least three (3) years before applying for Medicaid or was not for the purpose of fraud.

(d) Any rule adopted by the office of the secretary concerning

a transfer of property may not apply to a transfer of property that occurred before the effective date of the rule.

SECTION 2. IC 12-15-2-23.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 23.5. (a) This section is effective beginning October 1, 2009.**

(b) The office may not implement the optional provision allowed in 42 U.S.C 1396p(c)(1)(A) to apply penalties specified in 42 U.S.C. 1396p(c)(1)(A) to a noninstitutionalized individual or the spouse of the noninstitutionalized individual for the disposal of assets for less than fair market value.

(c) In implementing the federal Deficit Reduction Act of 2005, the office shall comply with the following:

(1) A rule adopted may not apply to the transfer of property or another transaction that occurred before the passage of the rule.

(2) The office may not require an individual to return all assets in order to reduce a penalty period for the transfer of assets. The office shall allow a penalty period to be proportionally reduced for a partial return of assets.

SECTION 3. IC 30-4-3-25.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 25.5. (a) This section applies beginning October 1, 2009.**

(b) Except as provided in subsection (d), when a trust created to comply with 42 U.S.C. 1396p(d)(4)(A) is terminated, the trustee shall not distribute trust property to any person entitled to payment from the trust until the office of Medicaid policy and planning has been fully reimbursed for assistance rendered to the person for whom the trust was created.

(c) The primary purpose of a trust described in subsection (b) is to ensure that the state is repaid Medicaid benefits provided in return for excepting the trust from the general requirements of 42 U.S.C. 1396(d).

(d) A trustee may pay federal and state taxes from the trust before reimbursing the office of Medicaid policy and planning.

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COMMITTEE REPORT

Madam President: The Senate Committee on Health and Provider Services, to which was referred Senate Bill No. 301, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 3, delete "When" and insert "**(a) Except as provided in subsection (b), when**".

Page 1, delete lines 11 through 17, begin a new paragraph and insert:

"**(b) The office may disregard a contribution by an individual if the individual can demonstrate that the transfer follows a pattern that existed for at least three (3) years before applying for Medicaid or was not for the purpose of fraud.**

(c) Any rule adopted by the office of the secretary concerning a transfer of property may not apply to a transfer of property that occurred before the effective date of the rule.".

Delete page 2.

and when so amended that said bill do pass.

(Reference is to SB 301 as introduced.)

MILLER, Chairperson

Committee Vote: Yeas 11, Nays 0.

SENATE MOTION

Madam President: I move that Senate Bill 301 be amended to read as follows:

Page 1, line 3, after "(a)" insert "**This section is effective beginning October 1, 2009.**
(b)".

Page 1, line 3, delete "(b)," and insert "**(c),**".

Page 1, line 12, delete "(b)" and insert "**(c)**".

Page 1, line 16, delete "(c)" and insert "**(d)**".

Page 1, after line 18, begin a new paragraph and insert:

"SECTION 2. IC 12-15-2-23.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 23.5. (a) This section is effective beginning October 1, 2009.**

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(b) The office may not implement the optional provision allowed in 42 U.S.C 1396p(c)(1)(A) to apply penalties specified in 42 U.S.C. 1396p(c)(1)(A) to a noninstitutionalized individual or the spouse of the noninstitutionalized individual for the disposal of assets for less than fair market value.

(c) In implementing the federal Deficit Reduction Act of 2005, the office shall comply with the following:

(1) A rule adopted may not apply to the transfer of property or another transaction that occurred before the passage of the rule.

(2) The office may not require an individual to return all assets in order to reduce a penalty period for the transfer of assets. The office shall allow a penalty period to be proportionally reduced for a partial return of assets.

SECTION 3. IC 30-4-3-25.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 25.5. (a) This section applies beginning October 1, 2009.**

(b) Except as provided in subsection (d), when a trust created to comply with 42 U.S.C. 1396p(d)(4)(A) is terminated, the trustee shall not distribute trust property to any person entitled to payment from the trust until the office of Medicaid policy and planning has been fully reimbursed for assistance rendered to the person for whom the trust was created.

(c) The primary purpose of a trust described in subsection (b) is to ensure that the state is repaid Medicaid benefits provided in return for excepting the trust from the general requirements of 42 U.S.C. 1396(d).

(d) A trustee may pay federal and state taxes from the trust before reimbursing the office of Medicaid policy and planning.".

Renumber all SECTIONS consecutively.

(Reference is to SB 301 as printed February 13, 2009.)

MILLER

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